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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,281	02/26/2002	Lawrence Green	PDI-26	5348

7590 01/26/2004

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EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 01/26/2004

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,281

Applicant(s)

GREEN ET.AL.

Examiner

Teena K Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8 and 10-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,10,14,17,20-24 and 30 is/are rejected.
- 7) ☒ Claim(s) 11-13,15,16,18,19,25-29 and 31-34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claims 4 and 7-10 is withdrawn after further review of the Diaz reference previously used in the office action dated 06/23/03.

Rejections based on the Diaz reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3-6, 14, 17, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Diaz (6,481,019).

Diaz in an airflow control system discloses:

- a lightweight headgear structure (12),

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- a fan (50) mounted to said headgear structure to generate air flow around said headgear structure,
- a power supply (70) connected to supply power to said fan (50),
- air flow monitoring means mounted to said headgear structure to monitor the air flow adjacent to said headgear structure (Col. 12, lines 11-65), and indicia means connected with said air flow monitoring means to provide an indication of a predetermined operating condition thereof (Col. 12, lines 39-65).

With respect to claim 3, Diaz discloses wherein said airflow monitoring means is a mechanical apparatus (Col. 12, lines 55-65).

With respect to claim 4, Diaz discloses wherein said airflow monitoring system is an electrical apparatus (controller 118).

With respect to claim 5, Diaz discloses wherein said power supply comprises a battery (Col. 7, lines 8-20).

With respect to claim 6, Diaz discloses a shroud (10) adapted for covering said headgear structure.

With respect to claim 14, Diaz discloses wherein said air flow monitoring means includes a current sensing device for determining the amount of current supplied to said fan (118, Col. 12, lines 11-65).

With respect to claim 17, Diaz discloses a voltage detecting circuit (118) connected to said power supply (70) to detect the output level therefrom.

With respect to claim 20, Diaz discloses a battery voltage monitoring means (118) to monitor the voltage level produced by said battery.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 8, 10, 21-24, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz (6,481,019) in view of Klockseth et.al. (5,906,203).

The difference between Diaz and claim 8 is the indicia means being a first light emitting diode.

Klockseth in an air flow control system discloses an a monitoring means which monitors the condition of the power source, the filter and/or the fan/motor unit generating a warning signal for detection by the wearer should the performance rate fall below a pre-set safe minimum level, preferably a light source and/or audible tone (LED) (Col. 4, lines 28-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ any well known warning means doing so would have provided a monitoring means which monitors the condition of the power source, the filter and/or the fan/motor unit generating a warning signal for detection by the wearer should the performance rate fall below a pre-set safe minimum level, preferably a light source and/or audible tone (LED) including the LED taught by Klockseth.

With respect to claim 10, Klockseth teaches an LED indicia means but does not teach a second light emitting diode. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a second light emitting diode, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claim 21, note rejections of claims 8 and 10 above.

With respect to claim 22, Diaz discloses wherein said power supply comprises a battery (Col. 7, lines 11-20).

With respect to claim 23, Diaz discloses a battery voltage monitoring means (118) to monitor the voltage level produced by said battery.

With respect to claim 24, note rejection of claims 8 and 10 above.

With respect to claim 30, Diaz discloses wherein said electrical apparatus of said air flow monitoring means includes a current sensing means for determining the amount of current supplied to said fan (118).

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5, 6, 17, and 20 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

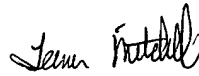
Claims 11-13, 15, 16, 18, 19, 25-29, and 31-34 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (703) 308-4016. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

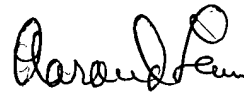


Teena Mitchell

Examiner

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January 17, 2004



Aaron J. Lewis
Primary Examiner